

STATE OF IOWA
BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD

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CHAUFFEURS, TEAMSTERS and HELPERS,)
LOCAL UNION NO. 238,)
Petitioner)

and)

CITY OF CEDAR FALLS,)
Public Employer)

CASE NO. 4534

PUBLIC EMPLOYMENT
RELATIONS BOARD

PROPOSED DECISION AND ORDER

James H. Murphy, Administrative Law Judge. This case arises as a result of a Petition for Reconsideration of Unit filed by the Chauffeurs, Teamsters and Helpers, Local Union No. 238 (Teamsters) pursuant to rule 4.5 of the Public Employment Relations Board (PERB or Board). In its Petition the Teamsters seek the reconsideration of a Board determined bargaining unit composed of certain employees of the City of Cedar Falls, Iowa (City). An amendment to the petition was granted at hearing.

The hearing on this issue was scheduled and conducted before the undersigned on September 17, 1991 at the City Hall building in Cedar Falls, Iowa, at which the Teamsters were represented by its counsel, Neil A. Barrick and the City by Steven Moore, Assistant City Attorney. Both parties were provided the opportunity to present evidence and arguments at hearing.

Having reviewed the entirety of the record, including the parties' stipulations, as well as the briefs submitted by the parties on September 30, 1991, in support of their respective positions, I issue the following proposed Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

The City of Cedar Falls is a public employer within the meaning of Section 20.3(1)¹, and the Chauffeurs, Teamsters and Helpers Local Union No. 238 is an employee organization within the meaning of Section 20.3(4).

The present bargaining unit was defined by Board order on November 26, 1975 in Case Nos. 342 and 353, based upon stipulations of the parties to that action. In that decision there were two units defined.² The unit that is central to the present petition is a unit commonly called the "general city" unit or "third group" and consists of:

INCLUDED: All employees of the City of Cedar Falls public works department, parks department, recreation department, clerk-auditor department, human development department, community development clerical position, and recreation department custodian.

EXCLUDED: Street commissioner, assistant street commissioner, three street foremen, building inspector in building inspection division, city engineer, superintendent and foreman in sanitation division, superintendent of traffic operations division, superintendent of waste-water treatment division, engineering assistants in the engineering division, cemetery superintendent, parks maintenance superintendent, tree maintenance superintendent, golf course superintendent, equipment maintenance superintendent, parks director-city arborist, assistant planning director, planning director, human development director, assistant city clerk, public works director,

¹This and all subsequent citations, unless otherwise specified, refer to the Code of Iowa (1991).

²The composition of the other unit related to the City's police department which is not at issue in the pending case. In fact, the decision in that case was primarily focused on the composition of the police unit, and other than the stipulation regarding the "general city" unit in Case Nos. 342 and 353, the decision contains nothing pertaining to evidentiary matters relating to the appropriateness of the "general city" unit.

city clerk, chief equipment mechanic, Secretary II, cultural or recreation specialist, all employees of the police department and all employee of the fire department.

At the time that the above unit was stipulated to by the parties, the City was comprised of eight departments other than the city attorney's office. These departments included public works, parks, recreation, clerk, human development, community development, fire and police. Of the city departments, public works had the largest number of employees.

Within the public works department there were several divisions and those included the street department, the sanitation division, cemetery division, building/zoning division and the city engineers office.

Although the parties stipulated to the "general city" unit in Case Nos. 342 and 353, no election was held, and thus no employee organization was certified as the exclusive bargaining representative for the unit. Between 1975 and 1991 there were attempts made by organizations seeking to organize elements of the public works department, however, none of these attempts were successful, and the unit has never had an employee organization certified to represent it.

From 1975 to 1987 there were minor changes made in the City's departmental structure. During this period the cemetery division was removed from the public works department. In 1987 the City instituted a major reorganization in its departmental structure. This reorganization resulted in the reduction of the eight departments into five new departments. These new departments now

consist of the Human and Leisure Service Department, Administrative Services Department, Developmental Services Department, Public Works Department, and Public Safety Department.³

The reorganization of the Public Works Department resulted in a reduction of its divisions. The divisions that remained after 1987 are Operations/Maintenance, Water Reclamation, and Building and Traffic Maintenance. Although the record is unclear as to whether it was 1987 or earlier, the engineer's office and building/zoning also are no longer in the Public Works Department. These two divisions merged into the Developmental Service Department.

The record reflects that although this was a major overhaul, the rank-and-file workers still performed the same job as before, and for the most part, the employees reported to the same place for work and answered to the same first line supervisors as they had prior to the reorganization. However, a major change in job classification titles was a consequence of the reorganization. The City's Personnel Manager testified that it would be difficult for the Board to ascertain what job classifications would be in the "general city" unit due to the reorganization. Those changes in classifications now make the "general city" or "third group" unit⁴ comprised of the following job classifications:

INCLUDED: Clerk-Typists, Equipment Service Attendants,
Groundkeepers, WWTP Assistants, Equipment Operator I,
Print Shop Operator, WWTP Operator I, Account Clerk,

³Employer's Exhibit 4.

⁴Parties Stipulation No. 3.

Computer Operator, Engineering Technician, Equipment Operator II, Senior Groundkeeper, Equipment Mechanic, Housing Specialist, Planner I, WWTP Operator II, Building Inspector, Electrical Inspector, Plumbing Inspector, and Maintenance Worker.

EXCLUDED: Mayor, all Elected Officials, Secretary I, Secretary II, Assistant City Attorney, Arborist Supervisor, Assistant City Clerk, Cemetery Supervisor, City Attorney, Golf Course Supervisor, Personnel Specialist, Planner II, Public Works Supervisor, Sports Programmer, Civil Engineer I, Equipment Mechanic Supervisor, WWTP Chief Operator, Civil Engineer II, Park Superintendent, Survey Party Chief, Assistant City Engineer, Building Official, City Clerk, City Planner, Community Services Manager, Data Processing Manager, Financial Service Manager, Operations/Maintenance Manager, Parks Division Manager, Recreation Division Manager, Traffic Operation/Public Buildings Superintendent, WWTP Superintendent, City Engineer, Personnel Manager, Administrative Services Director, Developmental Services Director, Human & Leisure Service Director, Public Safety Director, Public Works Director, and all other employees and all others excluded by the Act.

Although the "general city" unit has no certified bargaining representative under the Act, the City and the employees in the unit have a "meet and confer" relationship. Each year during the month of January, the designated spokespersons from the unit meet with City officials regarding matters concerning working conditions, salaries, insurance, and other benefits.

Regarding working conditions the City has formulated a written document called the Statement of Policy on Personnel and Procedure.⁵ The Policy is uniformly applied to all employees in the "general city" unit as well as part-time employees as far as the policies are applicable. The police and fire units both have

⁵Employer's Exhibit 16.

separate collective bargaining agreements and thus are not covered under the Statement of Policy.

The Policy covers working conditions, grievance procedures, overtime pay, holidays, vacations, leaves, seniority, layoffs, retirement, and other related matters. Under the "meet and confer" status the "general city" unit can discuss with City officials changes in personnel matters, however, if a disagreement between the parties arises, the parties have no right to fact-finding or arbitration to resolve the disagreement. The City has the final say in these matters.

With reference to the pay plan,⁶ the City conducted a study, in 1987, regarding a salary schedule for the "general city" unit which updated a prior pay plan. The new salary schedule aggregates various job descriptions in similar pay grades, based upon the City's conclusion that certain job functions are similar in nature. For example, the job classifications contained in the same pay grade are clerk typist, groundkeeper, maintenance worker, and wastewater treatment plant assistant. All pay grades also have nine (9) step increases. The City also has a separate part-time employee pay schedule somewhat similar to the full-time schedule.

According to the testimony, City employees considered "blue collar" are those whose job includes manual labor, physical exertion, and mainly perform outdoor type of work. Generally these jobs entail the use of heavy equipment and vehicles; require the use of power and hand tools; and those particular jobs related to

⁶Employer's Exhibit 15.

the maintenance of City property. The parties stipulated at hearing that the "blue collar" employees are only found within the Department of Public Works and the Parks Division of the Department of Human and Leisure Services.⁷

The testimony reflects that the "blue collar" employees' job classifications as found in these departments are maintenance worker, equipment operator I, equipment operator II, equipment mechanic, equipment service attendant, wastewater treatment plant assistant, wastewater treatment plant operator I, wastewater treatment plant operator II, laboratory technician, groundskeeper and senior groundskeeper, and part-time and seasonal laborers.⁸ As of September, 1991, there were approximately one hundred eleven (111) "blue collar" workers in the existing unit.

In contrast to the functions performed by the "blue collar" employees, the other employees in the "general city" unit are considered "white collar" and clerical jobs. These jobs entail the use of office equipment such as typewriters, computers, and other electronic machines. These jobs are of the indoor sedentary type.

Due to the nature of their work the "blue collar" employees do not have contact with other unit employees outside of the respective departments. The "blue collar" employees have minimal contact with the office personnel within their departments except when they are required to go to City offices.

⁷Stipulation No. 6.

⁸Employer's Exhibits 5, 8, 9 and 10.

The City's work hours are generally Monday through Friday and generally between 8 a.m. and 5 p.m., although weekend work is required on occasion. All employees of the "general city" unit work within the City limits of Cedar Falls.

CONCLUSIONS OF LAW

The issue in this case is whether the City's "blue collar" employees should be severed from the bargaining unit established by the Board in 1975, and placed, as urged by the Teamsters, into a separate bargaining unit. With respect to a petition for reconsideration of unit, Board Rule 4.5 states that,

"if (the Board) determines that the petitioner has not established grounds that the previous board determination of the bargaining unit is inappropriate, the board may dismiss the petition."

Thus, under the rule, the Teamsters in this case have the burden of establishing that the bargaining unit as determined in 1975 is inappropriate. The Board has also interpreted this rule to require the Teamsters to submit relevant evidence not considered in the original determination of the unit, or show that changes have occurred between the original unit determination and the filing of the election petition.⁹

The difficulty with the application of this standard in this case is that the standard is too narrow as it pertains to stipulated units. The Board allows parties to stipulate to the makeup of bargaining units resulting in units which are of the

⁹State of Iowa, 78 PERB 1287.

parties' own making rather than upon a unit description which is imposed upon them.

At the time that the "general city" unit was established no evidence was presented regarding the makeup of that unit. Indeed, the decision issued in Case Nos. 342 and 353 is silent regarding any matters pertaining to the unit that was established. The order establishing that unit was the result of an informal bargaining unit determination process in which the City and the employee organization involved stipulated to the composition of the unit. A proposed decision consistent with that stipulation was issued, and no objections being filed, the stipulated unit became the final decision of the agency.

The Board has previously concluded, in City of Marshalltown that, "it has always been a policy of the Board that it does not consider itself bound by the stipulation of the parties." The Board went on to conclude in that case that ". . . we alone are ultimately responsible for the appropriateness and legality of bargaining units for public employees".¹⁰

In the stipulated "general city" unit there could possibly be professional and nonprofessional employees as well as supervisory and non-supervisory employees. The confusion regarding the "general city" unit is heightened by the 1987 reorganization which caused an extensive change in the job classification nomenclature, and by the fact that there has been no amendment sought or granted to reflect who is currently included in the "general city" unit.

¹⁰City of Marshalltown, 76 PERB 826.

The testimony clearly shows that it would be virtually impossible to determine which employees are currently included in the unit in contrast to those employees included in the stipulated unit set out in 1975.

This particular case, with its factual background, demonstrates that the scope of a reconsideration is too narrow to adequately address the issue regarding the City's "blue collar" employees. As the original unit of 1975 was by stipulation of the parties, there are no facts with which to make a determination that changes have occurred. Likewise, there was no evidence considered by the Board in the original unit determination that can now be scrutinized relative to the evidence adduced at hearing. As was admitted by the City's Personnel Manager, the composition of the current "general city" unit is completely different than that stipulated to originally in Case Nos. 342 and 353. Due to these factors, I am necessarily compelled to look to Section 13.2 of the Act to make a determination as to the appropriateness of a separate "blue collar" unit.

The Act requires that the Board determine an appropriate unit, not the most appropriate unit.¹¹ Unit determinations require a case by case analysis applying the statutory unit determination criteria to the facts of each case. Section 13.2 of the Act provides that in determining an appropriate bargaining unit the Board shall,

¹¹Antho-Oto Community School District, 85 PERB 2678.

... take into consideration along with other relevant factors, the principles of efficient administration of government, the existence of a community of interest among public employees, the history and extent of public employee organization, geographical location and the recommendations of the parties involved.

GEOGRAPHICAL LOCATION

This criterion can be treated summarily. The record reflects that all employees in the "general city" unit work within the City limits of Cedar Falls, although the "blue collar" workers perform their functions in areas separate from the unit's other employees. This is not of such significance as to be of consequence in deciding the basic issue.

HISTORY AND EXTENT OF PUBLIC EMPLOYEE ORGANIZATION

Although the current "general city" unit was established in 1975, no employee organization has represented the unit. Over the years the City has met with unit employees regarding work rules, benefits, and pay, however, these informal negotiations do not constitute bargaining in the sense that the parties meet on an equal footing. This criterion therefore is not substantial to the extent that it outweighs the other criteria.

RECOMMENDATION OF THE PARTIES INVOLVED

In the pending case, the parties are in disagreement as to whether or not the "blue collar" employees are an appropriate unit. While I am cognizant of the parties' stipulations regarding the location of the "blue collar" employees in the City's structure, this criteria is of little probative value in determining an appropriate unit.

EFFICIENT ADMINISTRATION OF GOVERNMENT

In City of Des Moines,¹² the Board held that this criterion requires the designation of as few a number of bargaining units as possible, consistent with the requirement that employees be permitted to form organizations of their own choosing to represent them in a meaningful and effective manner.

The requirement of limiting the number of units is tempered by the necessity that the unit structure affords meaningful collective bargaining. In this case the Teamsters have now petitioned to include the "blue collar" employees of the City in a separate bargaining unit, which clearly indicates that that organization intends to represent those workers.

Under the current "meet and confer" relationship, the parties meet yearly regarding personnel policies of the City. While that affords the employees an opportunity to review work issues with the City, and express their viewpoint, it still remains within the City's power to deny or reject any unit proposal relative to mandatory subjects of bargaining. The "meet and confer" relationship does not grant the unit the statutory right to pursue its bargaining proposals into statutory factfinding or arbitration procedures. While the "meet and confer" relationship is indicative of the parties' relationship, it falls short of placing the parties on equal footing as collective bargaining does.

¹²Des Moines Independent Community School District, 75 PERB 21, 125 and 126.

While it is true that placing the "blue collar" employees in a separate unit would create an additional City bargaining unit, and that this might entail more time and effort to be expended in bargaining, the fact remains that there would be four (4) distinct bargaining units instead of the existing three (3) units, an addition of only one unit.

COMMUNITY OF INTEREST

Consideration of the "community of interest" criterion requires comparison of the duties, skills, qualifications, method of compensation, benefits, hours, common supervision, employee contact, and employee transfers among the positions to be included in the bargaining unit.¹³

In the present case, the "blue collar" workers are employed in two (2) of the City's five (5) departments -- Public Works and Human and Leisure Services (Parks Division). Testimony shows that the "blue collar" jobs are the only jobs which involve outdoor physical labor and involve the use of heavy equipment and tools. The basic skills and qualifications which "blue collar" workers use in performing their jobs are quite dissimilar to the other employees in the "general city" unit. Additionally, they are the only City employees whose function relates to the maintenance of City property.

On a typical work day the "blue collar" workers do not have contact with others in the "general city" unit. The "blue collar"

¹³Des Moines Independent Community School District, 84 PERB 2498; Dubuque Community School District, 88 PERB 2988.

workers, as part of their job duties, have no need to be in the office areas where the clerical jobs are performed.

Due to the City's Statement of Policy and the general pay schedule, the pay, benefits, and work hours are similar among all employees in the "general city" unit. These are the only similarities that the "blue collar" employees share with the others in the unit.

The Board has, on several occasions, consistently held that based upon a community of interest along broad occupational categories that "blue collar" employees are significantly distinct from office clerical employees which justify their inclusion in a separate unit.¹⁴

The "blue collar" employees have a community of interest which is significantly distinct from the other employees in the existing "general city" unit and with regard to those employees that factor dominates over others to the extent that a separate unit should be established for them. I, therefore, find that the following constitutes an appropriate unit for the purposes of collective bargaining:

INCLUDED: The following classifications of employees in the Public Works Department and in the Park Division of the Department of Human and Leisure Services: Equipment Service Attendant, Groundskeeper, Maintenance Worker, WWTP Assistant, Equipment Operator I, WWTP Operator I, Equipment Operator II, Senior Groundskeeper, Equipment Mechanic, Laboratory Technician, and WWTP Operator II, and part-time and seasonal laborers included by The Act.

¹⁴Polk County 75 PERB 120, 227, 276 and 339; Des Moines Water Works, 77 PERB 810; City of Independence, 83 H.O. 2249.

EXCLUDED: Mayor, all elected officials, Director of the Public Works Department, Director of the Human and Leisure Services Department, Public Works Supervisors, Equipment Mechanic Supervisor, Operations/Maintenance Manager, Traffic Operations Superintendent, Water Reclamation Chief Operator, Water Reclamation Superintendent, Secretary II in the Public Works Department, Part-time Clerical in the Public Works Department, Maintenance Worker in the Building Maintenance Section, Park Division Manager, Park Superintendent, Cemetery Supervisor, Golf Course Supervisor, Arborist Supervisor, Secretary I's in the Human and Leisure Services Department, and all other employees and all others excluded by The Act.

Remaining would be other City employees who previously constituted the "general city" unit, which now consists of:

INCLUDED: Clerk Typists, Print Shop Operator, Account Clerk, Computer Operator, Engineering Technician, Housing Specialist Planner I, Building Inspector, Electrical Inspector and Plumbing Inspector.

EXCLUDED: Mayor, all Elected Officials, Secretary I, Secretary II, Assistant City Attorney, Arborist Supervisor, Assistant City Clerk, Cemetery Supervisor, City Attorney, Golf Course Supervisor, Personnel Specialist, Planner II, Public Works Supervisor, Sports Programmer, Civil Engineer I, Equipment Mechanic Supervisor, WWTP Chief Operator, Civil Engineer II, Park Superintendent, Survey Party Chief, Assistant City Engineer, Building Official, City Clerk, City Planner, Community Services Manager, Data Processing Manager, Financial Services Manager, Operations/Maintenance Manager, Parks Division Manager, Recreation Division Manager, Traffic Operation/Public Buildings Superintendent, WWTP Superintendent, City Engineer, Personnel Manager, Administrative Services Director, Developmental Services Director, Human and Leisure Services Director, Public Safety Director, Public Works Director, and all others employees and all others excluded by the Act.

On the basis of the foregoing Findings of Fact and Conclusions of Law, I hereby issue the following

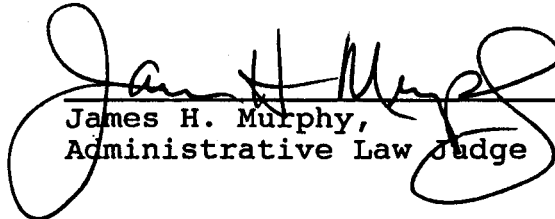
ORDER

IT IS HEREBY ORDERED that an election be conducted, under the supervision and direction of the Public Employment Relations Board,

at a time and place to be determined by the Board. Eligible to vote are all employees in the above described "blue collar" unit employed as of September 17, 1991¹⁵ and who are also employed in the bargaining unit on the date of the election.

IT IS FURTHER ORDERED that the public employer in this case submit to the Public Employment Relations Board within seven days an alphabetical list of the names, addresses and job classifications of all the eligible voters in the first unit described above.

DATED at Des Moines, Iowa this 4th day of December, 1991.


James H. Murphy,
Administrative Law Judge

¹⁵The parties have agreed pursuant to Rule 5.1(2) to the above date.